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**BEFORE THE
RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Statement of Issues Against:

Case No. 1H-2008-051

CHAD MYCHAL WIESCINSKI
4566 Orange Street, Apt. #1
Riverside, CA 92501

STATEMENT OF ISSUES

Respondent.

Complainant alleges:

PARTIES

1. Stephanie Nunez (Complainant) brings this Statement of Issues solely in her official capacity as the Executive Officer of the Respiratory Care Board of California, Department of Consumer Affairs.

2. On or about January 22, 2008, the Respiratory Care Board of California, Department of Consumer Affairs received an application for a Respiratory Care Practitioner License from CHAD MYCHAL WIESCINSKI (Respondent). On or about January 18, 2008, Chad Mychal Wiescinski certified under penalty of perjury to the truthfulness of all statements, answers, and representations in the application. The Board denied the application on March 28, 2008. On or about April 3, 2008, Respondent requested a hearing to contest the denial of his application for licensure.

1 **JURISDICTION**

2 3. This Statement of Issues is brought before the Respiratory Care Board
3 (Board), Department of Consumer Affairs, under the authority of the following laws. All section
4 references are to the Business and Professions Code (Code) unless otherwise indicated.

5 4. Section 3710 of the Code provides, in pertinent part:

6 “The Respiratory Care Board of California, hereafter referred to as the board, shall
7 enforce and administer this chapter [Chapter 8.3, the Respiratory Care Practice Act].”

8 5. Section 3718 of the Code states:

9 “The board shall issue, deny, suspend, and revoke licenses to practice respiratory
10 care as provided in this chapter.”

11 6. Section 3732 of the Code states:

12 “...

13 "(b) The board may deny an application, or may order the issuance of a
14 license with terms and conditions, for any of the causes specified in this chapter for
15 suspension or revocation of a license, including, but not limited to, those causes
16 specified in Sections 3750, 3750.5, 3752.5, 3752.6, 3755, 3757, 3760, and 3761."

17 7. Section 3750 of the Code states, in pertinent part:

18 “The board may order the denial, suspension or revocation of, or the
19 imposition of probationary conditions upon, a license issued under this chapter, for any of
20 the following causes:

21 “...

22 “(d) Conviction of a crime that substantially relates to the qualifications,
23 functions, or duties of a respiratory care practitioner. The record of conviction or a
24 certified copy thereof shall be conclusive evidence of the conviction.

25 “...

26 “(g) Conviction of a violation of any of the provisions of this chapter or of
27 any provision of Division 2 (commencing with Section 500), or violating, or
28 attempting to violate, directly or indirectly, or assisting in or abetting the violation

1 of, or conspiring to violate any provision or term of this chapter or of any provision
2 of Division 2 (commencing with Section 500).

3 “...”

4 8. Section 3750.5 of the Code states, in pertinent part:

5 "In addition to any other grounds specified in this chapter, the board may
6 deny, suspend, or revoke the license of any applicant or license holder who has done any
7 of the following:

8 "(a) Obtained or possessed in violation of law, or except as directed by a
9 licensed physician and surgeon, dentist, or podiatrist administered to himself or
10 herself, or furnished or administered to another, any controlled substances as
11 defined in Division 10 (commencing with Section 11000) of the Health and Safety
12 Code, or any dangerous drug as defined in Article 2 (commencing with section
13 4015) of Chapter 9 of this code.

14 "(b) Used any controlled substance as defined in Division 10 (commencing
15 with Section 11000) of the Health and Safety Code, or any dangerous drug as
16 defined in Article 2 (commencing with section 4015) of Chapter 9 of this code."

17 “...”

18 9. California Code of Regulations (CCR), title 16, section 1399.370,
19 states:

20 “For the purposes of denial, suspension, or revocation of a license, a crime
21 or act shall be considered to be substantially related to the qualifications, functions or
22 duties of a respiratory care practitioner, if it evidences present or potential unfitness of a
23 licensee to perform the functions authorized by his or her license or in a manner
24 inconsistent with the public health, safety, or welfare. Such crimes or acts shall include but
25 not be limited to those involving the following:

26 “(a) Violating or attempting to violate, directly or indirectly, or assisting or
27 abetting the violation of or conspiring to violate any provision or term of the Act.

28 “...”

1 “(c) Conviction of a crime involving driving under the influence or reckless
2 driving while under the influence.

3 “...”

4 **COST RECOVERY**

5 10. Section 3753.5, subdivision (a) of the Code states:

6 “In any order issued in resolution of a disciplinary proceeding before the
7 board, the board or the administrative law judge may direct any practitioner or applicant
8 found to have committed a violation or violations of law to pay to the board a sum not to
9 exceed the costs of the investigation and prosecution of the case. A certified copy of the
10 actual costs, or a good faith estimate of costs where actual costs are not available, signed
11 by the official custodian of the record or his or her designated representative shall be prima
12 facie evidence of the actual costs of the investigation and prosecution of the case.”

13 11. Section 3753.7 of the Code states:

14 “For purposes of the Respiratory Care Practice Act, costs of prosecution
15 shall include attorney general or other prosecuting attorney fees, expert witness fees, and
16 other administrative, filing, and service fees.”

17 12. Section 3753.1 of the Code states:

18 “(a) An administrative disciplinary decision imposing terms of probation
19 may include, among other things, a requirement that the licensee-probationer pay
20 the monetary costs associated with monitoring the probation.”

21 **FIRST CAUSE FOR DENIAL OF APPLICATION**

22 **(Conviction of a Crime)**

23 13. Respondent's application is subject to denial under sections 3732,
24 subdivision (b) and 3750, as defined by sections 3750, subdivisions (d) and (g), of the
25 Code, and (CCR), title 16, section 1399.370, subdivisions (a) and (c), in that Respondent
26 was convicted of a crime that substantially relates to the qualifications, functions, or duties
27 of a respiratory care practitioner and of reckless driving while under the influence of a
28 drug. The circumstances are as follows:

1 A. On or about May 20, 2005, in the case entitled *The People Of The*
2 *State of California v. Chad Mychal Wiescinski*, San Diego Superior Court Case No.
3 CN193161, Respondent was convicted on his own guilty plea of violating
4 California Vehicle Code section 23103(a) [reckless driving-drug] and was
5 sentenced to 3 years probation.

6 B. The circumstances of the arrest are as follows: On or about March
7 13, 2005, at approximately 2215 hours, Officer B and Officer U were in an
8 unmarked police car on northbound Escondido Blvd. at Valley Pkwy in Escondido,
9 California. Officer B saw a passenger in a 1997 Buick (Buick) smoking what
10 looked like a marijuana cigarette. The Buick pulled into the parking lot of the
11 Signature Theater located at 350 W. Valley Pkwy. Officer B called for police
12 officers in official police cars to conduct a traffic stop.

13 C. The Buick was stopped, after which, Officer B contacted the driver
14 and passenger of the vehicle. Upon contact, marijuana smoke billowed from the
15 interior of the vehicle when Officer B and the other police officers opened the door
16 to the vehicle. Officer B noted that the driver's eyes were bloodshot and puffy and
17 identified him as Respondent by his Michigan Driver License.

18 D. Respondent denied having any alcohol but admitted to Officer B to
19 smoking one-half of a marijuana joint, while driving, beginning at 2204 hours just
20 before being stopped. Respondent informed Officer B that the marijuana was of the
21 “Mexican Brick” variety. Respondent further stated that the reason he said no,
22 when asked by Officer B if he felt the effect of the marijuana, was because he did
23 not want to go to jail.

24 E. Office B conducted a field sobriety test (FST) on Respondent and
25 based on substandard FST results, the sign and symptoms manifested by
26 Respondent, and observations made by Officer B, Respondent was arrested and
27 transported to the Escondido Police Department for processing. Respondent
28 submitted to blood screen test which detected the presence of

1 9-tetrahydrocannabinol¹ and 9-carboxy THC². Respondent was later booked into
2 the Vista Jail.

3 **SECOND CAUSE FOR DENIAL OF APPLICATION**

4 **(Possession of Controlled Substance)**

5 14. Respondent's application is further subject to denial under section
6 3732, subdivision (b), as defined by section 3750.5, subdivision (a), of the Code, and CCR,
7 title 16, section 1399.370, subdivision (a), in that he was in possession of a controlled
8 substance, to wit: marijuana, as more particularly described in paragraph 13, above, which
9 is incorporated by reference as if fully set forth herein.

10 **THIRD CAUSE FOR DENIAL OF APPLICATION**

11 **(Use of Controlled Substance)**

12 15. Respondent's application is further subject to denial under section
13 3732, subdivision (b), as defined by section 3750.5, subdivision (b), of the Code, and CCR,
14 title 16, section 1399.370, subdivision (a), in that he used a controlled substance, to wit:
15 marijuana, as more particularly described in paragraph 13, above, which is incorporated by
16 reference as if fully set forth herein.

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26 1. 9-Tetrahydrocannabinol (THC) is the active chemical in *cannabis* (marijuana).

27 2. 9-Carboxy THC is a product of the body's metabolism of THC.
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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Respiratory Care Board issue a decision:

1. Denying the application of CHAD MYCHAL WIESCINSKI for a Respiratory Care Practitioner License;
2. Directing CHAD MYCHAL WIESCINSKI to pay the Respiratory Care Board of California the costs of the investigation and enforcement of this case, and if placed on probation, the costs of probation monitoring;
3. Taking such other and further action as deemed necessary and proper.

DATED: May 22, 2008

Original signed by Liane Zimmerman for:
STEPHANIE NUNEZ
Executive Officer
Respiratory Care Board of California
Department of Consumer Affairs
State of California
Complainant

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